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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/751,140	01/05/2004	Bill Spiegel		1745

7590 06/25/2004  
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PUNTA GORDA, FL 33950

EXAMINER
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FRANK, RODNEY T

ART UNIT	PAPER NUMBER
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2856

DATE MAILED: 06/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/751,140

Applicant(s)

SPIEGEL, BILL

Examiner

Rodney T. Frank

Art Unit

2856

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 5 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

**DETAILED ACTION*****Drawings***

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "25" has been used to designate a entry for pool water on page 6, line 1, an air float which floats in the pool water page 6, line 15 and reading from .graduated lines on page 6, line 20. Is reference number 25 for an entry/opening or is it the pool water? Correction is required.
2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "22" has been used to designate both height of pool surface of the swimming pool page 5, line 23 and water of a swimming pool page 5, line 20. Should the pool surface be pool water surface? Correction is required.
3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "18" has been used to designate both legs on page 5, line 21 and telescoping leas on page 6, lines 3-4. Correction is required.
4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "30" has been used to designate both a float on page 7, line 1 and an air chamber on page 7, line 12. Correction is required.
5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: reference number 23 from figure 2. The reference number needs to be deleted from the figure or added to the specification with an appropriate description. Correction is required.

***Claim Rejections - 35 USC § 112******Specification***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

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- a. The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
7. It's confusing whether the applicant wants reference number 25 for an entry/opening or is it to represent the actual pool water? It is not clear if reference number 23 is for the height of the pool surface or the height of the water in the pool? Is reference number 30 for a floating air chamber for buoyancy? Appropriate correction is required without adding new subject matter.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spiegel (U.S. Patent Number 5,551,290) in view of Maresca, Jr. et al (U.S. Patent Number 4,646,560; hereinafter referred to as Maresca ).

As to claim 1, Spiegel teaches a partially submerged container with a bottom with a hole and inner tube having a bottom edge fastened to the bottom. Spiegel also includes a guide cap place over said inner tube and a float responding only to environmental changes (col. 2, lines 55-67, col. 3-4, lines and claim 1). Spiegel does not teach three adjustable legs attached to the bottom. However, Maresca, does teach an adjustable foot (30) extending from the bottom of the tube (12) and resting on the bottom of the tank (16) (col. 4, lines 25-27 and Fig 1).

It would have been obvious at the time the invention was made to one skilled in the art to add adjustable legs to give support. The number of adjustable legs added to the present invention is an inventor's design choice that would increase stability of the container, which would be desired and obvious to one of ordinary skill in the art.

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With regard to claim 2, the design of the legs is a well known and established design of telescopic support legs that would be obvious to one of ordinary skill in the art. Such supports are widely used, for example, with camera tripods, portable tables, and walking sticks. Since such a design is so well known, then the actual particulars of the legs would not be deemed novel in view of what is already known in the prior art.

### *Conclusion*


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The examiner has cited various references that are deemed relevant to the present application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney T. Frank whose telephone number is (571) 272-2193. The examiner can normally be reached on M-F 9am -5:30p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron E. Williams can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RTF  
June 23, 2004

  
HEZRON WILLIAMS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2800